IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2173 OF 2005

Sanjay Dnyaneshwar Kolekar ...Petitioner
Vs.
The State of Maharashtra ...Respondent

Shri Prakash Naik for the Petitioner.
Shri K.V. Saste, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : OCTOBER 17, 2005.

P.C.:

1. Heard the Advocate appearing for the Petitioner and the learned A.P.P. for the State. The challenge in this Petition is to the order of externment passed against the Petitioner under the Bombay Police Act, 1951 and confirmation thereof in appeal. The main submission made by the Advocate appearing for the Petitioner is that though the alleged prejudical activities of the Applicant which are relied upon in the order of externment are confined to the area falling within the jurisdiction of Pant Nagar Police Station, Mumbai, the order of externment relates to Mumbai, Thane and Raigad districts. He submitted that the order is excessive. Reliance is placed on decision of this court in Criminal Writ Petition No.548 of 2005 and other connected Petitions which was delivered on 22nd September, 2005. The learned A.P.P. opposed the

submission of the Advocate for the Petitioner by pointing out that the order of externment itself discloses that district Raigad is easily accessible to district Mumbai by several modes of transport.

2. I have considered the submissions. In view of the decision of this Court in Criminal Writ Petition No.548 of 2005, no fault could have been found with the order of externment if it related only to districts of Mumbai and Thane. However, the order extends to district Raigad. This Court held thus:

> All that has been said by the Apex Court is that the view expressed by this Court consistently as regards Mumbai and Thane districts will have to be accepted as correct as the view pertains to the matters of local colour and conditions. The view of this Court which is approved is that Greater Bombay and Thane districts are intimately connected considering several modes of communications and other factors. Any part in Mumbai is easily connected by transport with any other part of Greater Mumbai and Thane districts. Thus, the

Apex Court accepted as a matter of fact that the districts Greater Mumbai and Thane are intimately connected as a result of existence of several factors such as contiguous industrial area, availability of suburban trains and they form a single unit. Therefore, the Apex Court confirmed the order of externment of the Petitioner before it whose activities were confined to Greater Mumbai from the two districts of Greater Mumbai and Thane. It must be borne in mind that Apex Court has not disturbed the decision of the Division Bench of this Court in case of Balu Shivling Dombe(Supra). **In the case of Balu, as pointed out earlier, this Court held that liberal interpretation cannot be given to the phraseology used in Section 56 of the said Act of 1951 as the Division Bench observed that in a sense the whole State of Maharashtra is contiguous to any area within the State. It must be borne in mind that in the case of Pandharinath (Supra), the Apex Court has not adopted the test of geographical proximity. The**

test adopted by the Apex Court is based on several factors such as availability of easy modes of transport like suburban trains and more importantly intimate connection. What has been accepted as correct by the Apex Court are the decisions of this Court rendered after considering the local colour and conditions holding that Greater Mumbai and Thane are intimately connected and form, so to say, a single unit.

12. There cannot be any dispute that considering the facts and circumstances of a particular case, the order of externment need not be restricted to the area in which illegal activities of the externee are carried on. A larger area may always form part of externment order. In a case where activities are confined to particular district and geographically contiguous district is shown to be intimately connected to the said district, the order may extend to both the districts. Mere geographical proximity is no ground to extend the

> order of externment to another district in which there are no objectionable activities by the externee. The decision of the Apex Court in Pandharinath's case proceeds on the basis of establishment intimate connection between Mumbai and Thane Districts. The area to which order of externment is to operate must be chosen with a view to meet the situation created by the objectionable acts of the person sought to be externed.

In the said decision, this Court dealt with a case where activities of the Petitioner were confined to Mulund area in Mumbai and the order of externment was passed in relation to Mumbai, Thane and Raigad Districts. This court held that the order of externment was excessive. Thus, it is obvious that the order of externment in the present case is excessive and the same deserves to be quashed and set aside.

3. Accordingly, rule is made absolute in terms of prayer clause (a).

JUDGE